THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NOs.21232 & 21234 OF 2005

Dated 29th September 2005

Between:

K.A.Padmanabha Rao & another

…Petitioners

And

The A.P. State Federation of Co-Op. Spinning Mills Ltd.,

Hyderabad & others

…Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NOs.21232 & 21234 OF 2005

COMMON ORDER:

The petitioners were employed as Managing Director and Spinning Master, respectively, in Adilabad Cooperative Spinning Mills Limited. The second respondent issued a show-cause notice dated 4.8.2005, requiring them to explain as to why Surcharge order, under Section 60 of the A.P. Cooperative Societies Act, 1964, for short "the Act", shall not be passed, for recovery of Rs.34,15,402/-, from them. The basis for this show-cause notice is an audit report of the year 1991-92. The petitioners challenge the same.

Sri V.Viswanatham, learned counsel for the petitioner, submits that the audit report of the year 1991-92 was not acted upon, and was as vague as it could be. He submits that the respondents themselves did not choose to initiate proceedings for about one and half decade, and it is not at all open to take up the issue, at this stage,

that too, several years after the petitioners have retired from service. He contends that when the amount could not have been recovered in law, on account of lapse of limitation, the respondents cannot press Section 60 of the Act, into service.

Learned Standing Counsel for respondents 2 and 3, on the other hand, submits that the petitioners have already submitted explanations, and they shall have to wait till the second respondent passes an order. He also submits that it is competent for the second respondent to initiate proceedings under Section 60 of the Act, on the basis of audit report.

The proceedings, against the petitioners, are at the stage of show-cause notice. They have already submitted explanations. It is true that several questions of law are involved in the matter, such as, whether it is competent for the second respondent to initiate Surcharge proceedings, about 15 years after the audit report, whether Section 60 of the Act can be pressed into service to recover the amount, as regards which a suit does not lie, whether the liability of the petitioners subsists, even after they retired from service, etc. The petitioners can raise all these objections, before the second respondent, and it goes without saying that the second respondent is bound to deal with all these contentions. The petitioners can also supplement their explanations with further representations.

For the forgoing reasons, both the writ petitions are disposed of, leaving it open to the petitioners, to put forward all legal and factual submissions, before the second respondent, and the latter, in turn, shall consider the same, while passing orders in pursuance of the show-cause notice. There shall be no order as to costs.

29th September 2005

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